

10:50 am, Oct 02, 2019

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 13-cr-00607-JFB
: :
- versus - : U.S. Courthouse
: Central Islip, New York
: :
KENNER, et al., : August 16, 2019
Defendants : 2:07 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:

Richard P. Donoghue, Esq.
United States Attorney

BY: **Matthew Haggans, Esq.**
Saritha Komatireddy, Esq.
Assistant U.S. Attorney
100 Federal Plaza
Central Islip, NY 11722

For the Defendant:

Sanford Talkin, Esq.
Talkin, Muccigrosso
& Roberts LLP
40 Exchange Place
18th Floor
New York, NY 10005

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
laFerrara44@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1 THE COURT: Criminal Cause for a Status
2 Conference in 13-cr-607, United States of America v.
3 Tommy Constantine.

4 Counsel, please state your appearances,
5 starting with the government.

6 MR. HAGGANS: Matthew Haggans and Saritha
7 Komatireddy for the United States.

8 Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 MS. KOMATIREDDY: Good afternoon.

11 MR. TALKIN: Good afternoon, your Honor.

12 Sam Talkin for Mr. Constantine who is also on
13 the telephone.

14 THE COURT: Good afternoon, Mr. Talkin, Mr.
15 Constantine.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: So as you know --

18 MR. TALKIN: Good afternoon, your Honor.

19 THE COURT: -- I scheduled this in order to
20 address the bail issues and the request by Mr. Talkin
21 with respect to additional help preparing the case
22 forward, and I agreed to let the attorneys appear by
23 phone. Mr. Constantine usually appears by phone for
24 these types of conferences, and I didn't think it was
25 necessary to have both lawyers be present in the

Proceedings

1 courtroom, especially because Mr. Constantine is not
2 going to be present.

3 So in any event let's deal with the bail issue
4 first, and I just want the record to be clear, the
5 government's motion for revocation is denied. I don't
6 think any of these issues that are being discussed today,
7 in my view, are not grounds for revocation of bail. Mr.
8 Constantine has been on bail for five years without
9 incident. He has a substantial bail package in place,
10 that I think secures his appearance in Court.

11 I don't believe the posture of the case, the
12 procedural posture of the case is a changed circumstance
13 that would even warrant that type of consideration.

14 The only issue that the Court has which I want
15 to try to resolve today is insuring that the amount of
16 security on the bond remains essentially the equivalent,
17 and that Mr. Constantine does not have access to some
18 large amount of money at his disposal, but I think we can
19 accomplish that based upon what I am reading.

20 So I just want to make sure I understand the
21 situation, Mr. Talkin. And also, there's a lot of back
22 and forth about how Mr. Constantine got the money, and
23 the circumstances. Obviously, that was the subject of
24 litigation, a settlement agreement was reached, and I
25 don't believe that I should -- you know, I am not getting

Proceedings

1 involved in what occurred there. There's been no finding
2 that Mr. Constantine did anything wrong in connection
3 with inheriting this money.

4 So again, my focus here today is to just make
5 sure the bond is as secure as it was, and that he is not
6 going to have access to some large amount of money that
7 he could use to flee the jurisdiction, although as I have
8 pointed this out before, and I'll point out again in
9 connection with the government's motion for revocation,
10 for Mr. Constantine to flee at this point, unless his
11 whole family was going to come with him overseas
12 somewhere, which I highly doubt, he would essentially be
13 fleeing the country, and leaving his mother, his wife,
14 his children, with a \$4 million judgment against them,
15 and he would never be able to see them again. So I think
16 the likelihood of that is very low.

17 But in any event, let me just make sure I
18 understand the situation, Mr. Talkin. The \$300- and what
19 is it 7 --

20 MR. TALKIN: 60.

21 THE COURT: -- 60 is going to be held in an
22 escrow account. It's the defendant's mother's money, and
23 she --

24 MR. TALKIN: Correct.

25 THE COURT: -- is on the bond.

Proceedings

1 MR. TALKIN: That's correct.

2 THE COURT: All right. So as far as I am
3 concerned, that additional money is just additional money
4 that is just securing the bond. Mr. Constantine is not
5 going to have access to that money. His mother is not
6 going to have access to that money. It's going to be
7 kept in an escrow account pending the outcome of the
8 case.

9 The other thing that you mentioned in your
10 letter, Mr. Talkin, in terms of not having any -- as a
11 result of Ms. Ferguson not being on the bond anymore,
12 that you believe that the mother's property has increased
13 in value, such that it would cover any difference --

14 MR. TALKIN: Yes, we believe that, your Honor.
15 I haven't documented that. We haven't done new
16 appraisals but it's just our look at the market tells us
17 that.

18 THE COURT: All right.

19 MR. TALKIN: But just your Honor so you know,
20 the other \$170,000 is still in my escrow account.

21 THE COURT: Well, that --

22 MR. TALKIN: And --

23 THE COURT: Go ahead.

24 MR. TALKIN: Okay.

25 THE COURT: Go ahead. I was going to get to

Proceedings

1 that.

2 MR. TALKIN: And --

3 THE COURT: I don't have any understanding who
4 would have access to that money.

5 MR. TALKIN: Nobody has access right now. I
6 think the real issue is should a -- you know, should Mr.
7 Constantine's bond be violated, and the government moved
8 against that \$170,000, it is still there, and it's going
9 to be in my escrow account, and even the attorneys out in
10 Arizona representing the trust don't quibble with that.

11 The issue is there's an argument to be made
12 that the government would have difficulty getting their
13 hands on that because the trust might have a better -- a
14 higher standing for that money than the government, and
15 they may not be able to get their hands on it, so they're
16 saying it's really not actual security.

17 But as far as whether it's still in escrow,
18 it's there, it's staying there. We're kind of rejecting
19 potential future litigation as the government's point of
20 view, that diminishes it --

21 THE COURT: All right.

22 MR. TALKIN: -- according to them.

23 THE COURT: But in terms of Mr. Constantine
24 being able to get his hands on that, that's not going to
25 be possible. It's going to be in the same escrow account

Proceedings

1 as the \$360,000.

2 MR. TALKIN: Correct. Even if Mr.
3 Constantine's a trustee, and he's in charge of that
4 money, I am not releasing that until your Honor tells me
5 I can release the whole amount.

6 THE COURT: All right. So does the government
7 want to be heard on -- it appears to me Mr. Constantine
8 has no access to this, you know, \$530,000, so it doesn't
9 create any issue about him getting this money, and being
10 able to flee with this money.

11 There appears to be an issue that the
12 government would not be able to recover the \$170,000 if
13 they were to forfeit the bond. Is that really the only
14 issue at this point?

15 MR. HAGGANS: Your Honor, based on the record
16 just made by Mr. Talkin and your Honor's prior ruling,
17 the government has nothing further with respect to the
18 monies in escrow.

19 THE COURT: All right. So I think what I would
20 like Mr. Talkin, if you could -- if Mr. Constantine can
21 have an appraisal done of his mother's property, just to
22 show that it has increased essentially in that -- you
23 know, it doesn't have to be like exact dollars, but
24 essentially it has increased such that the security on
25 the bond is equivalent then, I'm satisfied that this is

Proceedings

1 not

2 -- removing Ms. Ferguson, obviously from the bond, does
3 not create any additional risk that he will flee.

4 MR. TALKIN: Okay.

5 THE COURT: Okay?

6 MR. TALKIN: We'll take care of that.

7 THE DEFENDANT: Yes.

8 THE COURT: All right.

9 MR. TALKIN: Thank you, your Honor.

10 THE COURT: All right. Does the government
11 have anything else now on the bond issue?

12 MR. HAGGANS: I think, your Honor, that just
13 leaves the potential question of his access to those
14 funds that might fund the trust. As the government
15 understands the situation of the Arizona estate
16 proceeding, and as the government represented in its
17 letter, those trusts cannot be funded until, I believe,
18 the \$530,000 that's currently in escrow is released. If
19 that is also the defense's understanding, and Mr.
20 Talkin's able to represent that on the record, I don't
21 think we have a further dispute on that issue, based on
22 the Court's prior ruling.

23 THE COURT: Mr. --

24 MR. TALKIN: I think that's correct, but you
25 know I don't really know 100 percent if that's correct.

Proceedings

1 But I think that there's the -- the issue could be if we
2 want to take -- I mean, one thing that the attorney in
3 Arizona for the -- I guess the plaintiff in that action,
4 or they -- and the trust, and the judge out there, they
5 want that 500 -- they want the Ferguson estate released
6 from any liability, which it sounds like I think we can
7 do.

8 I think that when we do that, that might make
9 the -- I think that makes the trust have the \$170,000.
10 What I don't know is if that act then "frees" it up, so
11 that they can act on it. That would be enough for the
12 Arizona courts then to get us in the position where the
13 trust is funded. I don't know the answer to that.

14 I mean it's academic for the short term because
15 whether it's funded or not, it's going to stay in my
16 escrow, but at some point someone could, you know, ask
17 for that money, and I don't know what the outcome, if the
18 Ferguson -- if Ferguson is taken off the bond, but I
19 am --

20 THE DEFENDANT: I might be able to shed a
21 little light if you wish -- if you want me to, Sam.

22 MR. TALKIN: No, let me -- I'll talk to you.
23 I'll figure that out.

24 THE DEFENDANT: We'll figure that out.

25 THE COURT: Yes, that's not an immediate issue

Proceedings

1 for purposes of today, but if that -- Mr. Talkin, that's
2 something you and Mr. Constantine could look into and --

3 MR. TALKIN: Yeah, I'll file a brief letter on
4 that issue to try to firm that up.

5 THE COURT: All right.

6 MR. HAGGANS: Your Honor, if I could just
7 briefly respond to that.

8 THE COURT: Sure.

9 MR. HAGGANS: I think this is set out in the
10 government's letter on this issue, the government's
11 concern is that once the -- if the Ferguson estate is
12 released from the bond in a manner that's satisfactory to
13 the Arizona court, those trusts might well be funded with
14 not the funds from the escrow, those funds will remain in
15 escrow but those trust over which the defendant will
16 become the trustee will be funded with significant funds.
17 I believe it's 1.1 or \$1.2 million, and the government's
18 chief concern is not so much the funds in escrow because
19 those will remain in escrow as Mr. Talkin has
20 represented, but that Mr. Constantine would have access
21 to those kinds of funds, albeit in his capacity as a
22 trustee. That gives the government grave concern about
23 his ability to use those funds in advance of surrendering
24 for any sentence the Court may impose.

25 THE COURT: Mr. Talkin, is that a possibility,

Proceedings

1 that the \$1.1 million would be delivered to the trust?

2 MR. TALKIN: I believe so, yes. I think at
3 some point that could happen if Ferguson is released as a
4 suretor.

5 THE COURT: All right. Well, that's something
6 that has to be addressed, and again, you can talk to Mr.
7 Constantine and just put it in a letter to me that again,
8 I don't think we have to worry about that for purposes of
9 today but in the event that that happens, in the near
10 future, there has to be some restriction on his ability
11 to access \$1 million as a trustee.

12 One of the things I was thinking of as I was
13 reading the letter, if the money -- if that money is in
14 the hands of some third party -- physically in the hands
15 of some third party, one of the things I was thinking was
16 a possibility, assuming it was an independent third
17 party, that the government and the Court would receive
18 any notification of any attempt by him to access that
19 money.

20 So if as a trustee, he tried to access that
21 money, that the government and the Court would receive
22 immediate notification that he attempted to do so, that
23 might be another way of dealing with that type of
24 situation, but --

25 MR. TALKIN: Yeah, my understanding is that

Proceedings

1 that's what is going to happen. The person who is third
2 in succession can't be because he's going to manage that
3 money, and that person would be the third person that
4 would be controlling the money, and --

5 THE DEFENDANT: And he's also a suretor.

6 MR. TALKIN: And so he would be able to notify,
7 we could obviously draw up an agreement or agree on the
8 record --

9 THE COURT: Right.

10 MR. TALKIN: -- that it's his obligation to
11 notify the government, and the Court, and me if anyone
12 asks for access to that money beyond what he's doing
13 professionally.

14 THE COURT: Yeah, I --

15 MR. TALKIN: But that's fine with us.

16 THE COURT: Yeah, I think that would have to be
17 in writing, and he would have to agree to that, but that
18 -- and he's a suretor too?

19 MR. TALKIN: Yes.

20 THE COURT: Yeah, I'm comfortable with that.

21 THE DEFENDANT: It's Steve Curry (ph.), your
22 Honor.

23 THE COURT: All right. I think I would be
24 comfortable with that arrangement.

25 MR. TALKIN: Okay. I will talk to all the

Proceedings

1 relevant parties on that, and include that in the letter
2 that I write, confirmation that we're ready to do that,
3 and that whatever steps to satisfy the government, and
4 the Court, we'd need to do, we'll do.

5 THE COURT: All right. On the issue of getting
6 additional counsel, I had the same reaction that the
7 government had to the request, Mr. Talkin, and I don't --
8 two issues with it; one is, what you're saying needs
9 additional work, as text messages, I don't believe are
10 new. Certainly the letters from Mr. Kaiser (ph.), and
11 Mr. Pecca (ph.), are not new. So I am not sure that that
12 -- either of those things would warrant the need for an
13 additional attorney to -- you know, I am not even sure
14 exactly what you would be raising with the Court on those
15 things at that point, given that they're not new, but I
16 want --

17 MR. TALKIN: I guess --

18 THE COURT: I also don't want to have another
19 attorney -- for any attorney to really help you on these
20 things, they would have to -- it would -- you know, from
21 a taxpayer expense, it would cost a lot of money to get
22 another attorney up to speed enough to be able to write
23 something on any of those types of issues because they
24 don't understand the case, but that's my initial
25 thoughts.

Proceedings

1 MR. TALKIN: I mean, my thought is I would have
2 that attorney just, you know, on the discrete issue that
3 I think I could focus them on with the text.

4 As far as the texts are concerned, and the
5 government and I have been working on trying to identify
6 -- I've gone through all the discovery letters. It looks
7 like, and that those -- there's a discovery letter that
8 says that they were turned over right before trial. I
9 don't know. I'm waiting a communication back from the
10 government, I'm sure they have to go dig through their
11 files, like I have had to to figure it out but I guess
12 what I envision now -- because I wasn't sure if it was
13 Brady or just more fuel for the ineffective assistance
14 because I am not sure -- I mean, maybe that those texts
15 -- the texts that are in Kenner's motion are not
16 referenced in trial in any way.

17 There are texts that are but this is a separate
18 -- these are separate texts. By my view of those, they
19 are -- they would've presented very effective cross-
20 examination of critical witnesses, and they weren't used.
21 So my thought process now is that it's just an addendum
22 to the ineffective assistance of counsel motion, which
23 wouldn't be that long of a process, but I am not sure.
24 If it became a Brady issue, which it doesn't look like it
25 is based on, you know, me pulling these letters, that's a

Proceedings

1 different story.

2 That's kind of when -- when I wrote that
3 letter, I thought there was a good chance it was a Brady
4 issue because obviously I wasn't the attorney at trial,
5 and I didn't have the opportunity to take in every piece
6 of discovery but it looks to me, if I can get behind the
7 letters and see what was actually turned over, that the
8 text that Kenner's referring to were turned over right
9 before trial. That's the way it looks right now.

10 THE COURT: All right. Well --

11 MR. TALKIN: Or it might've been during trial.
12 It may be during trial, but you know right there.

13 THE COURT: But again, if you want to --

14 MR. TALKIN: So --

15 THE COURT: -- if you want to put in a short
16 letter pointing me to these texts, that you believe are
17 exculpatory, that the lawyers -- that you used --
18 should've used, I think you could put in that letter
19 pretty quickly. Okay?

20 MR. TALKIN: Okay.

21 THE COURT: And the government obviously could
22 respond but I would just ask that you and the government
23 work together just to get to the bottom of, you know,
24 what was produced. I assume the government is confident
25 that these texts were produced, correct?

Proceedings

1 MS. KOMATIREDDY: Yes, your Honor. I guess we
2 would like just some clarification here. My
3 understanding is that there were a number of text
4 messages on Mr. Kenner's devices, and that we're talking
5 about many, and I'm not sure what the basis of the
6 proposed motion is, but if it's an addendum to the
7 ineffective assistance of counsel motion, we would
8 obviously have to notify Mr. LaRusso. Mr. LaRusso would
9 have to then provide an addendum to his affidavit which
10 in the first instance, was quite extensive. I would
11 expect he would want to have an opportunity to defend his
12 conduct again in an extensive and detailed manner.

13 I don't think it -- just based on how we
14 handled these in the past, I imagine this would introduce
15 months, not weeks of delay.

16 And I don't see a prejudice to the defendant
17 because he still has the ability in collateral
18 proceedings to make these arguments. So it's not -- it
19 seems just like a way to delay sentencing, as opposed to
20 -- without real prejudice to the defendant otherwise.

21 THE COURT: Well I agree.

22 MS. KOMATIREDDY: So --

23 THE COURT: Anything that is going to delay the
24 sentencing, Mr. Talkin, right now, would be putting in a
25 letter pointing me to certain texts that he believes

Proceedings

1 should've been introduced into evidence that we're
2 introduced into evidence.

3 Whether or not that required Mr. LaRusso to
4 respond, I have no idea. They may not be exculpatory at
5 all, that I may look at them, and think that these
6 weren't particularly meaningful texts, and I wouldn't
7 need a response from Mr. LaRusso if the texts don't
8 appear to be exculpatory.

9 If they do appear to be exculpatory, and they
10 need some type of response from Mr. LaRusso, then I will
11 worry about then but I don't think it makes -- to suggest
12 that when I have this, you know, massive ineffective
13 assistance of counsel motion before me now, that I am
14 going to decide that to leave open for collateral review,
15 some text messages, I don't think makes any sense why I
16 wouldn't try to -- given the posturing.

17 I don't think there's going to be months of
18 delay, even assuming I needed a response from Mr.
19 LaRusso, this is a pretty narrow -- I don't know how it
20 would take Mr. LaRusso to respond to why he did or did
21 not introduce some text messages but I didn't see the
22 text messages.

23 I don't even know what they say. So we'll take
24 it one step at a time, but I would ask that you do that
25 relatively soon, Mr. Talkin.

Proceedings

1 MR. TALKIN: Yes.

2 THE COURT: It doesn't -- again, it could be in
3 the form of a letter, and just attach the text messages
4 that you believe, you know, the lawyers should have
5 introduced or cross-examined, whatever you think, okay?

6 MR. TALKIN: Yep, I will do that, your Honor.
7 Okay. I will get that together, and do it as fast as
8 possible.

9 THE COURT: All right. We're obviously
10 scheduled for September, I think --

11 MR. HAGGANS: Yes.

12 THE COURT: -- 5th, for another status,
13 correct? Is that --

14 MR. HAGGANS: Yes.

15 MR. TALKIN: Yes, your Honor. The defense memo
16 is due right before or after that, I don't have it in
17 front of me but I'm going to move this issue to the
18 front, get that out soon, along with this short bail
19 letter, and then we'll get the sentencing memo.

20 THE COURT: All right.

21 MR. TALKIN: But I'm not looking to delay
22 anything. It's just there's certain -- I have an
23 obligation to represent my client, and get things done,
24 and it's just -- it's when new things pop up, it's --
25 everything -- it takes time, and I have to take time to

Proceedings

1 do things.

2 THE COURT: All right. And I don't want to
3 discuss the forfeiture issue because Mr. Kenner is not
4 here, but obviously we'll discuss it on September 5th,
5 but if the government has any update with respect to the
6 dialogue about the resort, and those discussions, don't -
7 - you can put in a letter before the 5th, just so I
8 understand what that situation is, you know, going into
9 that conference. So everybody will understand what the
10 situation is, okay?

11 MR. HAGGANS: Your Honor, I would just note,
12 and I don't think this will prejudice Mr. Kenner in my
13 saying so, that the forfeiture counsel for the government
14 did file the preliminary order and I believe with a cover
15 letter, just in the past several days, and so that is on
16 the docket.

17 THE COURT: Okay. I will have to go -- we're
18 having issues with -- since I've gotten elevated to the
19 Circuit, we don't get an automatic bounce of everything
20 that's filed. We have to go back, and look at the
21 docket. So I'll go back and check that. Okay?

22 MS. KOMATIREDDY: Yes, your Honor.

23 MR. HAGGANS: Yes, your Honor.

24 THE COURT: All right. Thank you very much.
25 Have a good weekend.

Proceedings

1 MR. HAGGANS: Thank you, your Honor.

2 MR. TALKIN: Thank you.

3 THE DEFENDANT: Thank you very much, your
4 Honor. Bye.

5 MR. TALKIN: Goodbye.

6 (Matter concluded)

7 -o0o-

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

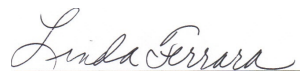
25

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 1st day of October, 2019.


Linda Ferrara

AAERT CET 656

Transcriptions Plus II, Inc.